



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2017-0519; FRL-9977-04-Region 6]

Approval and Promulgation of Implementation Plans; Texas; Control of Air Pollution from Visible Emissions and Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA), the Environmental Protection Agency (EPA) is approving revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas to EPA on August 23, 2017, that pertain to particulate matter standards and outdoor burning regulations. This rulemaking action is being taken under Section 110 of the CAA.

DATES: This rule is effective on **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice, unless the EPA receives relevant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If the EPA receives such comment, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2017-0519, at <http://www.regulations.gov> or via email to pitre.randy@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not

submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Mr. Randy Pitre, (214) 665-7299, pitre.randy@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Mr. Randy Pitre, 214-665-7299, pitre.randy@epa.gov. To inspect the hard copy materials, please schedule an appointment with Mr. Randy Pitre or Mr. Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

Section 110 of the CAA requires states to develop and submit to the EPA a SIP to ensure that state air quality meets National Ambient Air Quality Standards (NAAQS). These ambient

standards currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin through air pollution regulations and control strategies. The EPA approved SIP regulations and control strategies are federally enforceable.

On August 23, 2017, the Texas Commission on Environmental Quality (TCEQ or “the State”) submitted revisions to the Texas SIP that address Control of Air Pollution from Visible Emissions and Particulate Matter requirements found in Title 30 of the Texas Administrative Code (30 TAC), Chapter 111 (Control of Air Pollution from Visible Emissions and Particulate Matter), Subchapter B (Outdoor Burning). The submitted revisions address two sections within Chapter 111: in section 111.203 (“Definitions”) and the State added a new section 111.217, titled “Requirements for Certified and Insured Prescribed Burn Managers.”

II. The EPA’s Evaluation

As described in the Technical Support Document (TSD) accompanying this action, the TCEQ submitted revisions to 30 TAC Chapter 111, Subchapter B, Sections 203 and 217. The submittal revises 30 TAC 111.203 by adding two definitions: “Certified and Insured Prescribed Burn Manager” and “Sunrise/Sunset.” These new definitions enhance the SIP by establishing a responsible party for prescribed fire management and add clarity. Additional edits include renumbering to account for the new definitions and minor edits that add specificity.

The submittal also revises 30 TAC 111 by adding Section 217: “Requirements for Certified and Insured Prescribed Burn Managers.” This section describes the obligations regarding authority to direct a burn, allowable habitats for a burn, notification procedures,

proximity to city/town limits, local ordinances, meteorological and temporal conditions, and items not permissible for burning. These revisions are consistent with Table 1 to 40 CFR 50.14.

Because these revisions include requirements that protect public health and property, and reduce or eliminate an impact from prescribed burning on the NAAQS, they improve the SIP. For these reasons, we do not believe such revisions would interfere with attainment of the NAAQS, reasonable further progress, or any other applicable requirement of the CAA, and we find these revisions approvable. For more detail, please see the TSD for this action.

III. Final Action

We are approving the August 23, 2017, submittal that adopted amendments to the Texas SIP at 30 TAC Section 111.203 and 30 TAC Section 111.217.

The EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice unless we receive relevant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the

rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the revisions to the Texas regulations as described in the Final Action section above. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 6 Office (please contact Mr. Randy Pitre, 214-665-7299, *pitre.randy@epa.gov* for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of

Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 19, 2018.

Anne Idsal,
Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS – Texas

2. In §52.2270(c) the table titled “EPA Approved Regulations in the Texas SIP” is amended by revising the entry for section 111.203 under Chapter 111, Subchapter B and adding an entry for section 111.217.

The amendments read as follows:

§52.2270 Identification of plan.

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(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/Subject	State approval/Submittal date	EPA approval date	Explanation
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Subchapter B: Outdoor Burning				
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Section 111.203	Definitions	7/7/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
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Section 111.217	Requirements for Certified and Insured Prescribed Burn Managers	7/7/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
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[FR Doc. 2018-08662 Filed: 4/26/2018 8:45 am; Publication Date: 4/27/2018]